

Agricultural Law Memo

ALM 10-03

April 8, 2010

TOPIC: Farm Labor Housing and Zoning

ISSUE: Often the application of zoning provisions applied to proposed building construction or uses can lead to incorrect or restrictive decisions on the part of local zoning enforcement officers when such provisions are applied to proposals involving farm labor housing. The purpose of this memorandum is to clarify the relationship between farm labor housing, structures used for agriculture, and Massachusetts General Laws, Chapter 40A, Section 3.

Farmers often find a need to supply housing for farm workers and on occasion will either seek to construct a new building or modify an existing one for farm housing purposes. Local zoning by-laws or ordinances typically have provisions regulating dwellings, whether for single family, multifamily, or group residence. Examples of such provisions include frontage requirements or limits to the number of dwellings per parcel or lot. Such provisions may – and often do – run contrary to Massachusetts General Law (G.L.) [c. 40A, §3](#) (40A, §3), a section of the General Laws captioned: Subjects which zoning may not regulate.

This section states in pertinent part: “No zoning ordinance or by-law shall... prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture,....” The statute is clear in its intent to restrict local zoning ordinances or by-laws from prohibiting, unreasonably regulating, or requiring a special permit for the construction and use of a structure that has as its primary purpose commercial agriculture. A building permit is not a special permit and would be applicable as the circumstances require.

Structures or buildings constructed or used as housing farm labor have commercial agriculture as their primary use. Chapter 40A, §3 makes no distinction between farm labor housing for a single family or for housing a group of laborers. Other statutes and regulations may nevertheless continue to apply, such as G.L. [c. 111, §128G](#), and [105 CMR 420.00](#) et seq.

As such no zoning ordinance or by-law may prohibit, unreasonably regulate, or require a special permit for the use, construction, or reconstruction of structures used for farm labor housing. The application of any provision regulating dwellings, such as frontage requirements or maximum numbers of dwellings, cannot – when applied to agriculture – result in a prohibition or require a special permit. Such provisions may be reasonable when the public health and welfare aspects of the provisions outweigh a farmer’s right to use his or her agriculture resources according to the Constitution of the Commonwealth. The force of 40A, §3 remains only as long as the structure remains in an agricultural use such as farm labor housing.